

# Summary

## Annual Report 2005

### **Folketingets Ombudsmand**

Parliamentary Commissioner for Civil  
and Military Administration in Denmark

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# Preface

This booklet summarizes my Annual Report for 2005 to the Danish Parliament.

In 2005, the Danish Ombudsman institution celebrated its 50th anniversary, and the booklet includes a short chapter on this event.

*Part 1* of the Summary contains the chapter describing the anniversary.

*Part 2* contains information about organisation, staff and office, international relations, travels and visitors, own initiative projects and inspections and other activities and the budget.

*Part 3* contains case statistics.

*Part 4* contains summaries of cases.

*Copenhagen, November 2006*

HANS GAMMELTOFT-HANSEN

# PART 1

50TH  
ANNIVERSARY

# About the 50th Anniversary of the Danish Parliamentary Ombudsman

In the days from Wednesday 30 March until Saturday 2 April 2005, the Danish Ombudsman institution celebrated its 50th anniversary. A 50th anniversary is still a unique event among Ombudsmen, with Denmark having a special status as the country which has very often provided the inspiration. The programme was therefore organised in such a way that the guests in addition to the professional main content also had the opportunity to experience some of the traditions and cultural heritage associated with the Ombudsman office in Denmark.



*Seminar at the Danish Parliament, 30 March 2005*

On 1 April 1955, Professor Stephan Hurwitz LL.D. opened the Ombudsman office in Denmark, which thus became the third country in the world to introduce an Ombudsman in modern times. In its basic structure, the office was very similar to the Swedish and Finnish models. However, there were also significant differences from the institutions in Sweden and Finland. In Denmark, the original Swedish model

was changed in several respects and over the years, the differences became more and more obvious.

In an international context, the Ombudsman concept spread during the 1960s, for instance through New Zealand to the Commonwealth countries, and the new democracies in Africa and elsewhere often included an Ombudsman as part of the new agenda. Most of these new Ombudsman institutions were created with Danish inspiration and as a result of the efforts to inform about the office and the personal contacts of the Danish Ombudsmen, starting with Hurwitz.

As Denmark and Danish Ombudsmen have had a special role in the international dissemination of the Ombudsman concept in modern times and in this connection have helped to establish similar institutions, an examination of how Ombudsmen and other democratic institutions can be established and given initial support was an obvious topic. In collaboration with the Danish Ministry of Foreign Affairs, a one day seminar was held at the Danish Parliament on the first day of the anniversary, 30 March 2005. In addition to the Danish Ombudsman, Hans Gammeltoft-Hansen, and Ambassador Carsten Staur from the Ministry of Foreign Affairs, Morten Kjærum, Executive Director of the Danish Institute for Human Rights, gave an opening speech about the importance of collaboration in the support for democracy building. Former Minister, His Excellency Dr. Fawaz Al Zu'bi spoke about the experiences in Jordan, where he as Minister had focused heavily on the establishment of an Ombudsman office. Artur Lazebeu from the Albanian Ombudsman institution and Hans-Henrik Brydensholt, Judge at the International Criminal Tribunal for the former Yugoslavia, spoke about the nature of the Danish support in Albania. Finally,

Ms. Anne Bossman, acting Commissioner for the Ghanaian Commission for Human Rights and Administrative Justice, and Jens Olsen from the Danish Ombudsman institution spoke about the experiences from the support of and collaboration with Ghana.

The speeches and the experiences they reflected were then discussed by the audience in *Landstingssalen* and a panel chaired by Senior Adviser Lars Adam Rehof from the Ministry of Foreign Affairs. The panel consisted of Hans Gammeltoft-Hansen, Fawaz Al Zu'bi, Anne Bossman, Morten Kjærum and Morten Elkjær, Chief Adviser at the Danish Ministry of Foreign Affairs.

The speeches and the debate made an important contribution to the understanding of the role allocation in the usually complicated and nuanced process which arises when support towards the establishment of democratic institutions is given and received.



*Hans Gammeltoft-Hansen in conversation with the Albanian Minister for Culture, His Excellency Blendi Klosi*

On 31 March and 1 April 2005, Denmark and the Danish Ombudsman together with the Council of Europe Commissioner for Human Rights, Alvaro Gil-Robles, hosted the so-called Round Table Meet-

ing of European Ombudspersons and the Commissioner. These meetings are held biannually. All European Ombudsmen are invited to the event, where themes of common interest are discussed. Both the Council of Europe and the Ombudsmen value this opportunity to meet and exchange experiences and views.



*Opening of the Round Table Meeting, 31 March 2005*

The meeting in Copenhagen was opened in the presence of His Royal Highness Crown Prince Frederik. The Speaker of the Danish Parliament, Christian Mejdahl, and the two hosts welcomed the participants. The UN Commissioner for Human Rights, Louise Arbor, sent a telegram with congratulations and greetings, emphasising the need for international collaboration between different institutions and persons in the protection of the individual and the rights of the individual.

On the first day of the meeting, four general issues were analysed and discussed: The Ombudsman's role and function in tomorrow's Europe, the European Ombudsman's role in an expanded Europe, Council of Europe activities to support the national Ombudsmen and finally the relationship between regional and national Ombudsmen. The second day fo-

cused on two important and in practice very relevant issues for Ombudsmen: Powerful inmates in the prisons and the protection of private life. Two working groups were presented with speeches by the Ombudsmen of many European countries: Allar Jöks from Estonia, Dr Andrzej Zoll from Poland, Albert Takács from Hungary, Nina Karpachova from Ukraine, Pierre-Yves Monette from Belgium, Mats Melin from Sweden, Otakar Motejl from the Czech Republic and Arne Fliflet from Norway.

On Friday 1 April, the meeting closed with a banquet at the Danish Parliament.

As the final part of the overall programme, a symposium was held at Copenhagen University on 2 April 2005. Linda Nielsen, Rector of the University, welcomed the participants. While the themes of the first two meetings focused on the international collaboration, the focus at the symposium shifted under the heading *The Ombudsman between Legislator, Administration and Citizen – developing the Ombudsman Concept*.



*Symposium at Copenhagen University, 2 April 2005*

The Ombudsman institution as an idea or concept was analysed and discussed from four perspectives:

a political science angle, a political angle, an administration law/administration angle and a media angle. The speeches for each theme were given by a Danish and a foreign representative respectively. The political science angle was thus described by the European Ombudsman, Professor Nikiforos Diamandouros, with Professor Jens Peter Christensen, the political angle was outlined by Ivan Bizjak, former Minister and Ombudsman in Slovenia, with Svend Auken, formerly Minister of Labour and later Minister for Environment and Energy, the administration law angle was put into perspective by Kevin Murphy, former Secretary General and Ombudsman in Ireland, with Michael Lunn, Permanent Secretary at the Ministry of Justice, and finally Emily O'Reilly, former political commentator and current Ombudsman in Ireland, with Tøger Seidenfaden, Editor-in-Chief of the newspaper *Politiken*, presented analyses of and views on the relationship between the media and the Ombudsman.

I would like to reiterate in this report my great gratitude for all the good will and assistance provided by institutions and individuals in connection with the planning and holding of our anniversary, especially Parliament and the Ministry of Foreign Affairs. I also warmly thank Augustinusfonden, BG Fonden, Ernst og Vibeke Husmans Fond, Hermod Lannings Fond, Hotelejer Andreas Harboes Fond, Knud Højgaards Fond, Konsul George Jorck og hustru Emma Jorck's Fond, Margot og Thorvald Dreyers Fond, Oticon Fonden, Tuborgfondet and Aage og Johanne Louis-Hansens Fond, which enabled us to hold an event that worked extremely well and was exceptionally well received in every respect. We were thus also able to invite all our guests to experience the new opera house and the performance of Poul Ruders' and Paul Bentley's opera "Process: Kafka" and to include a historically representative selection of Danish music through 300 years throughout the programme, from Diderik Buxtehude through, among others,

Niels W. Gade and Carl Nielsen to the above-mentioned Poul Ruders.

With the support of the above-mentioned funds, we were also able to publish a three volume work in English in connection with the anniversary: *The Danish Ombudsman 2005*. Volume I contains various articles about the history and methods of the Danish

Ombudsman and about the international collaboration which has always been very important to the Danish Ombudsman. Volume II contains summaries of fifty cases – one from each year since 1955 – and finally Volume III contains all the speeches presented at the symposium at Copenhagen University.



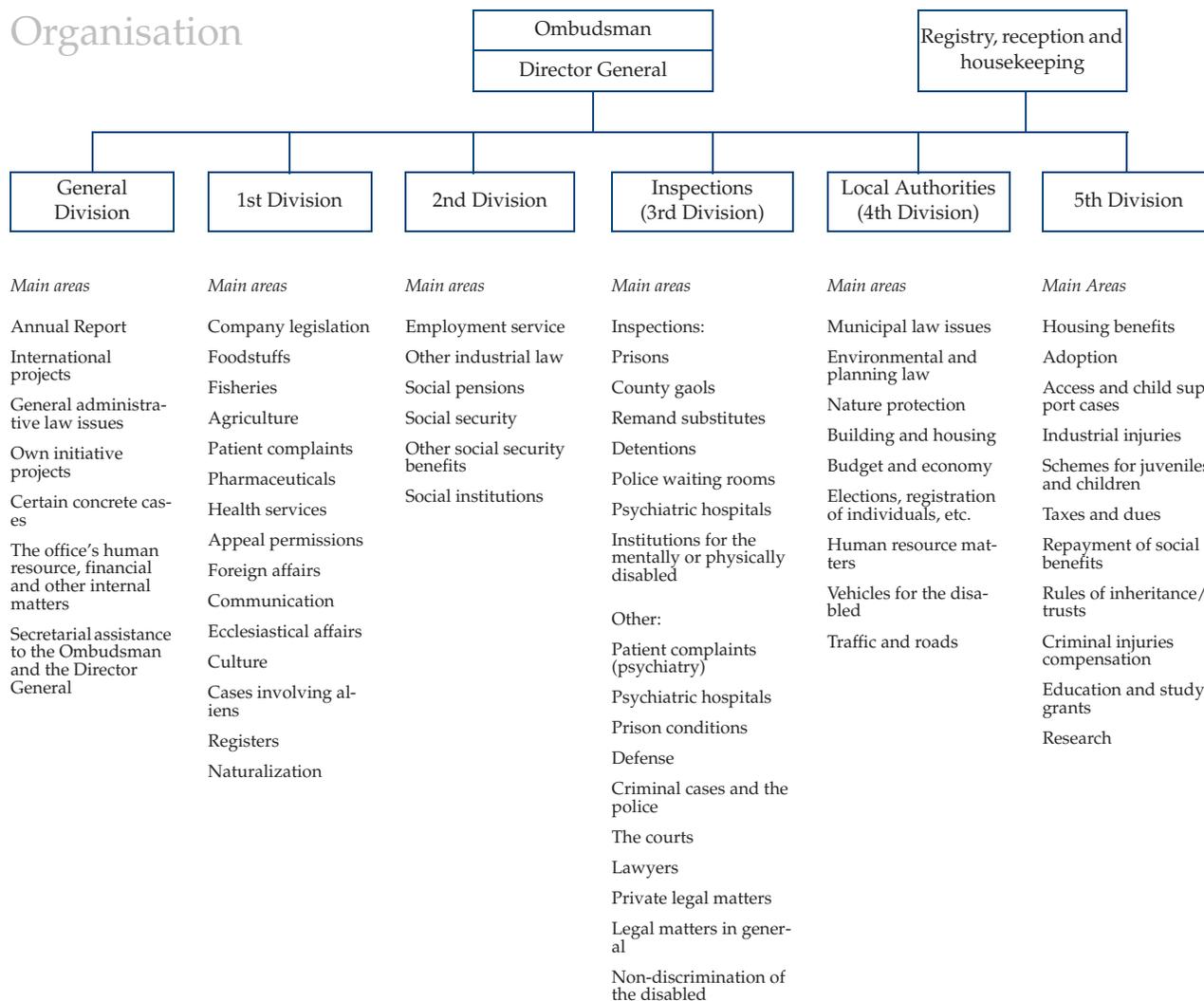
*The participants in the Round Table Meeting of European Ombudspersons and the Council of Europe Commissioner for Human Rights, held in Copenhagen on 31 March and 1 April 2005*



# PART 2

YEAR  
IN  
REVIEW

# Organisation



## Staff and Office

The structure of the office was as follows:

In my absence from the office Mr. Jens Møller, Director General, replaced me in the performance of my Ombudsman duties. He was in charge of general matters taken up for investigation on my own initiative and the processing of special complaint cases.

Mr. Lennart Frandsen, Deputy Permanent Secretary, was in charge of inspections.

Mr. Kaj Larsen, Deputy Permanent Secretary, was in charge of staffing and recruitment, budgeting and other administrative matters.

Mr. Jon Andersen, Deputy Permanent Secretary, Mrs. Vibeke Riber von Stemann, Chief Legal Adviser, and Mr. Jens Olsen, Chief Legal Adviser and International Relations Director, dealt with general questions of public administrative law as well as investigations undertaken on my own initiative. They also participated in the processing of individual complaint cases.

The office had five divisions with the following persons in charge:

### General Division

Deputy Permanent Secretary Mr. *Kaj Larsen*

### First Division

Head of Division Mrs. *Kirsten Talevski*

### Second Division

Head of Division Mrs. *Bente Mundt*

### Third Division (Inspections Division)

Deputy Permanent Secretary Mr. *Lennart Frandsen*

### Fourth Division

Head of Division Mr. *Morten Engberg*

### Fifth Division

Head of Division Mr. *Karsten Loiborg*

The 80 employees of my Office included among others fourteen senior administrators, 22 investigation officers, nineteen administrative staff members, two librarians and thirteen law students.

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## International Relations

During 2005, as in previous years, the guests we received had very different backgrounds. Generally, however, their common goal was to learn more about the (Danish) Parliamentary Ombudsman institution and its role in a modern democratic society. There-

fore, my office always offers general information about the Ombudsman institution and its history with a view to a subsequent exchange of experiences and reflections.

# Travels and visitors

## January

## February

## March

### Copenhagen

24–25 The Jordanian Minister for Public Sector Reform, Dr. Ahmad K. Masa'deh.

27 A group of Asian and African Fellowship students from Copenhagen DC / Danida (the Danish International Development Agency).

### Abroad

17–18 I visited the Albanian Ombudsman office in Tirana.

26–27 I hosted a West-Nordic Ombudsman meeting with the ombudsmen from Norway, Iceland, Greenland and the Faroe Islands.

### Copenhagen

16 Visitors from the Embassy of China.

## April

### Copenhagen

5 The Albanian chargé d'affaires, Mr. Qemal Minxhozi.

11 A group of human rights students via the Danish Institute for Human Rights.

### Abroad

14–15 Director General Mr. Jens Møller and International Relations Director Mr. Jens Olsen participated in a conference in Vilnius, Lithuania, celebrating the 10th Anniversary of the Lithuanian Ombudsman office.

## May

### Copenhagen

23 Students from Asia and Africa at the request of Copenhagen DC / Danida.

26 Opposition politicians from Uganda for a briefing on the Danish Ombudsman institution.

26 The French ambassador to Denmark, M. Régis de Belenet.

### Abroad

24–27 International Relations Director Mr. Jens Olsen participated in a government conference entitled “Re-inventing Government: Toward Participatory and Transparent Governance” in South Korea.

## June

### Copenhagen

6 Parliamentary delegation from Iraq headed by Iraq’s Equal Opportunities Minister.

9 Delegation from Burkina Faso’s Ministry for Human Rights at the request of the Danish Ministry of Foreign Affairs.

21 Delegation from Vietnam in connection with the United Nations’ Convention against Corruption (UNCAC) at the request of Respect Europe Danmark / Danida.

### Abroad

6–7 I attended the Baltic Sea Seminar for Legality Overseers; a seminar on the monitoring of constitutional rights and international human rights, at the Finnish Ombudsman office in Helsinki.

## July

### Copenhagen

20 The Algerian Ambassador to Denmark, Mme Latita Benazza.

## August

### Copenhagen

25 The Ugandan Minister of Justice, Mr. Adolf Mwesige.

## September

### Copenhagen

2 Participants in a conference for International Prosecutors, via the office of the Director of Public Prosecutions.

5–6 The Bolivian Ombudsman, Sr. Waldo Albarracín Sánchez.

25–29 The Jordanian Minister for Public Sector Reform, Dr. Tayseer Al Smadi, with Mr. Malik Alhamneh and Mr. Ala'eddin Aromouti.

29 Delegation from Vietnam headed by its Auditor General, Mr. Do Binh Duong, at the request of the Danish Ministry of Foreign Affairs.

### Abroad

12–13 I participated in the 5th Seminar of National Ombudsmen of the EU Member States, in The Hague.

## October

### Copenhagen

7 Government public prosecutor from Bhutan, Mr. Karma Rinzin, via the office of the Director of Public Prosecutions.

11 Three members of the European Commission against Racism and Intolerance, at the request of the Danish Ministry of Foreign Affairs.

27 A group of African and Asian Fellowship students at the request of Copenhagen DC / Danida.

### Abroad

19–20 I attended a seminar in Norway on the control of the public administration, arranged by the Norwegian Ombudsman office.

## November

### Copenhagen

10 A delegation from China's Ministry of Supervision.

11 The Director of Jordan's National Human Rights Institute, Mr. Ala'eddin Aromouti.

### Abroad

11–17 The Commission for Human Rights and Administrative Justice together with the Royal Danish Embassy in Ghana and the Danish Ombudsman office arranged a conference on "the Role of NHRI and Ombudsmen in the Fight against Corruption", in Accra, Ghana. International Relations Director Mr. Jens Olsen, Chief Legal Adviser Mrs. Lisbeth Adserballe, IT Manager Mr. Christian Møller and I represented the office.

## December

### Copenhagen

2 Two delegations from Saudi Arabia and South Korea respectively, at the request of the Danish Institute for Human Rights.

### Abroad

8–9 International Relations Director Mr. Jens Olsen, Head of Division Mr. Morten Engberg and I attended meetings in Tallinn, Estonia, on the invitation of the Estonian Ombudsman.

16–18 I participated in a West-Nordic Ombudsman meeting hosted by the Ombudsman on the Faroe Islands together with the ombudsmen from Norway, Iceland and Greenland.

## Own Initiative Projects and Inspections

One own initiative project was concluded in 2005, and 31 inspections were carried out during the reporting year. Part IV of the Annual Report provides

details concerning own initiative projects and inspections.

## Other Activities

During the year several members of my staff and I gave a number of lectures on general and more specific subjects related to the Ombudsman's activities. Furthermore, members of my staff and I lectured at several courses in public administrative law.

At the request of the Minister of Justice, and with the approval of the Danish Parliament's Legal Affairs Committee, I have undertaken to chair the government's Public Disclosure Commission. The Commission's task is to describe current legislation concerning public disclosure and to deliberate on the extent to which changes are required to the Access to Public Administration Files Act, and to make proposals for such changes. Mr. Jon Andersen, Deputy Permanent Secretary at the Parliamentary Ombudsman office, is secretary to the Commission.

In the autumn of 2004 Mr. Jens Møller, Director General at the Parliamentary Ombudsman office, was appointed chairman of the Ministry of Justice's Committee on the Electronic Law Gazette. The Committee's task is to examine the legal, administrative and practical problems that will arise in connection with the publication of the Law Gazette in electronic form. The Committee is to evaluate whether law amendments will be necessary, and prepare proposals for any such amendments. In 2005 the Committee submitted report No. 1464 on the Law Gazette in electronic form.

Director General Mr. Jens Møller and Head of Division Mrs. Bente Mundt were appointed by the National Board of Social Services as members of a reference group for "Project on case processing for the elderly".

The Ministry of Justice has appointed Head of Division Mrs. Kirsten Talevski as member of the Committee on Public Employees' Freedom of Speech and Right to Inform. The Committee's task is, among others, to describe the rules in force regarding the freedom of speech of public employees and evaluate whether there is a need for further legislation on the freedom of speech of public employees. The Committee will also go through the rules in force regarding the access of public employees to give the press or other external parties information in cases about potentially illegal administration or other misconduct in the public administration, including apparent abuse of public funds. Furthermore, the Committee is to consider whether there may be a need for adopting new legislative rules concerning the communication of such information to the press. The Committee was set up in 2004 and submitted report No. 1472 in March 2006.

In the autumn of 2004 the Ministry of Social Affairs appointed Head of Division Mrs. Bente Mundt as member of the Committee on Due Course in Cases concerning Placement of Children. The Committee submitted report No. 1463 in 2005.

## Budget 2005

Salary grade	
Salary for civil servants	6,747,00
Salary for employees under a collective wage agreement	19,590,000
Contributions for civil service retirement pensions	757,000
Pension contributions	2,475,000
Salary for other temp. workers	159,000
Maternity reimbursement, etc.	- 430,000
Wage pools	504,000
Additional work/overtime	278,000
Wage drift budget account	447,000
Special holiday allowance	20,000
<b>Payroll total</b>	<b>30,547,000</b>

Civil servant retirement pays	
Retirement pays for former civil servants	805,000
Benefits	3,000
Civil servant retirement contributions, income	- 756,000
<b>Retirement payments total</b>	<b>52,000</b>

Operating expenses	
Travels, etc.	345,000
Expenses, visitors to the office	1,114,000
Staff welfare	20,000
Printing, book binding expenses	558,000
Telephone subsidy	17,000
Cost of office space	3,368,000
Maintenance, fixtures and fittings	763,000
External services	59,000
Office expences	664,000
Library	651,000
Office machines, fixtures and fittings	223,000
IT services	223,000
IT operations and maintenance	1,833,000
IT purchases	616,000
Operating budget adjustment acc.	0
Transfer costs	1,990,000
Continuing education	700,000
Subsidy, staff lunch arrangement	150,000
Subsidy, Ministry of Foreign Affairs	- 798,000
<b>Operating charges total</b>	<b>12,496,000</b>

<b>TOTAL</b>	<b>43,095,000</b>
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# PART 3

CASE  
STATISTICS

# Complaints Received and Investigated

## 1. New Cases

In the year 2005 a total number of 4,266 new cases were registered. The corresponding figure for the year 2004 was 4,093 new cases.

By way of comparison, the development in the total number of cases registered over the past decade is illustrated in the figures below:

1996	2,914	2001	3,689
1997	3,524	2002	3,725
1998	3,630	2003	4,298
1999	3,423	2004	4,093
2000	3,498	2005	4,266

4,065 of the total number of 4,266 new cases in 2005 were complaint cases.

I took up 164 individual cases on my own initiative, cf. Section 17, subsection (1) in the Ombudsman Act.

The Ombudsman may carry out inspections of public institutions and other administrative authorities. Out of the total number of 4,266 new cases, 37 were inspection cases. Most of the inspection cases registered relate to institutions under the jurisdiction of the police and the prison services (remand centres, county gaols, and prisons, etc.) and psychiatric institutions. However, inspections of other administrative authorities were also carried out, e.g. the Danish Immigration Service. (The inspection cases are described in more detail in the Annual Report. In addition, all inspection reports are available in Danish on

the Ombudsman's website [www.ombudsmanden.dk](http://www.ombudsmanden.dk)).

### 1.1. Own Initiative Projects

The Ombudsman may undertake general investigations of the authorities' case processing on his own initiative, cf. Section 17, subsection (2) in the Ombudsman Act.

The cases examined in connection with the own initiative projects are not included in the number of cases registered or in the following statistics for cases closed in 2005.

No new own initiative projects were initiated in 2005.

In the previous years, several own initiative projects were initiated of which one project was concluded in August 2005 while another project was still pending at the close of 2005. The concluded project consisted of an investigation of 50 cases concerning right of access to documents from the Central Customs and Tax Administration. The second project concerns an investigation of a total of 40 complaint cases from the National Income Tax Tribunal, and is still pending.

### 2. Cases Rejected after a Summary Investigation

3,352 complaints lodged with my office during 2005 were not investigated for the reasons mentioned below. In 1,493 cases, the complaint had not been appealed to a higher administrative authority and a fresh complaint may therefore be lodged with my office at a later stage.

The 3,352 cases were not investigated for the following reasons:

Complaint had been lodged too late	113
Complaint concerned judgments or the discharge of judges' official duties	104
Complaint concerned other matters outside my jurisdiction including legislation issues and matters of private law	260
Complaint not clarified or withdrawn	191
Inquiry not involving a complaint	367
Inquiry involved an anonymous or manifestly ill-founded complaint	11
Other applications, including complaints that the Ombudsman decided to turn down	675
The authority has reopened the case following my preliminary request for a statement	49
Cases on my own initiative and not fully investigated	56
Complaint had been lodged too late with a superior authority	33
Complaint had not been lodged with a superior administrative authority	1,493
<i>Total</i>	<i>3,352</i>

### 3. Cases Referred to the Ad Hoc Ombudsman. – Function as Ad Hoc Ombudsman for the Lagting Ombudsman and the Landsting Ombudsman

I declared myself disqualified from investigating two complaint cases in 2005. The Legal Affairs Committee assigned the cases to High Court Judge Holger Kallehauge. Cases in which I have declared myself disqualified are not included in the statistics for the Ombudsman's pending cases, case processing time or concluded cases.

The Faroese Representative Council, the Lagting, asked me to act as ad hoc Ombudsman for the Lagting Ombudsman in one case in 2005. Likewise, the Greenland Parliament, the Landsting, asked me to act as ad hoc Ombudsman for the Landsting Ombudsman in one case in 2005.

### 4. Pending Ombudsman Cases

232 individual cases submitted to my office before 1 January 2005 were still pending on 1 June 2006. The own initiative project concerning the National Income Tax Tribunal (40 complaint cases) was also pending on 1 June 2006.

189 of the pending individual cases were submitted in 2005 and 43 dated from previous years. Some of the pending individual cases required a statement from the relevant authority or the complainant in order to be concluded, while others were awaiting general responses from a complainant or an authority.

### 5. Case Processing Time

Usually, complainants receive a preliminary reply from my office within 10 working days after receipt of the complaint, also in cases which are later rejected. Of the rejected complaint cases, 51.1 per cent were concluded within ten calendar days from receipt of the complaint. The average processing time for cases that were rejected was 34.5 days.

The average case processing time for cases subjected to a full investigation was 5.1 months (156 days) in 2005.

## ■ Tables

**Table 1** All cases (regardless of registration date) concluded during the period 1 January – 31 December 2005, distributed per main authority and the result of the Ombudsman’s case processing

Table 1: All concluded cases 2005 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
<b>A. State authorities</b>				
<b>1. Ministry of Employment</b>				
Department of Employment	16	9	6	1
National Board of Industrial Injuries	28	27	0	1
Labour Market Appeal Board	26	11	15	0
Danish Labour Market Supplementary Pension (ATP)	4	4	0	0
The ATP Complaints Board	2	2	0	0
Labour Market Councils, total	6	1	3	2
Public Employment Services	8	6	2	0
Danish Working Environment Authority	4	4	0	0
National Directorate of Labour	13	12	1	0
LD Pensions	3	2	1	0
<i>Total</i>	110	78	28	4

Table 1: All concluded cases 2005 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommendation etc.	Criticism, recommendation etc.
<b>2. Ministry of Finance</b>				
Department of Finance	9	4	2	3
State Employer's Authority	3	1	2	0
The Palaces and Properties Agency	2	2	0	0
The Danish Agency for Governmental Management	6	5	1	0
<i>Total</i>	20	12	5	3
<b>3. Ministry of Defence</b>				
Department of Defence	11	10	1	0
Royal Danish Defence College	1	1	0	0
<i>Total</i>	12	11	1	0
<b>4. Ministry of the Interior and Health</b>				
Department of Interior and Health	50	35	12	3
Regional State Authorities, total	85	75	9	1
Regional State Authority supervision of local councils, total	46	24	20	2
Danish Medicines Agency	3	2	0	1
National Board of Health	9	9	0	0
Medical Health Officers, total	3	3	0	0
National Board of Patient Complaints	48	34	12	2
Psychiatric patient complaint boards, total	4	4	0	0
Danish Emergency Management Agency	1	1	0	0
<i>Total</i>	249	187	53	9

Table 1: All concluded cases 2005 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
<b>5. Ministry of Justice</b>				
Department of Justice	64	51	8	5
Civil Affairs Agency	85	37	47	1
Data Protection Board	13	7	6	0
Danish Crime Prevention Council	1	1	0	0
Danish Prison and Probation Service	204	112	57	35
The Court Administration	1	1	0	0
State prisons	143	121	17	5
Ministry of Justice, Clinic of Forensic Psychiatry	1	1	0	0
County gaols	57	27	24	6
Prison and Probation Service hostels	1	0	1	0
Criminal Injuries Compensation Board	4	2	1	1
Danish Medico-Legal Council	1	1	0	0
Director of Public Prosecutions	30	20	10	0
The National Police Commissioner	11	11	0	0
Chief constables	136	112	10	14
Public prosecutors, total	92	53	37	2
<i>Total</i>	844	557	218	69
<b>6. Ministry of Ecclesiastical Affairs</b>				
Department of Ecclesiastical Affairs	27	20	2	5
Bishops	2	2	0	0
Diocesan authorities	3	3	0	0
Parish councils	3	3	0	0
<i>Total</i>	35	28	2	5

Table 1: All concluded cases 2005 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommendation etc.	Criticism, recommendation etc.
<b>7. Ministry of Culture</b>				
Department of Culture	8	8	0	0
The Danish Institute in Rome	1	0	1	0
The Royal Danish Academy of Art	1	1	0	0
DR (Danish Broadcasting Corporation)	17	10	5	2
TV 2 Regional	4	3	0	1
The Media Secretariat	1	1	0	0
The Royal Library	1	1	0	0
The National Museum	1	1	0	0
Provincial archives	1	1	0	0
Danish State Archive	1	1	0	0
<i>Total</i>	36	27	6	3
<b>8. Ministry of Environment</b>				
Department of Environment	7	7	0	0
Environmental Protection Agency	7	7	0	0
Environmental Appeal Board	1	1	0	0
Nature Protection Board of Appeal	35	19	14	2
Forest and Nature Agency	17	15	2	0
Forest district	2	2	0	0
<i>Total</i>	69	51	16	2

Table 1: All concluded cases 2005 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
<b>9. Ministry of Family and Consumer Affairs</b>				
Department of Family and Consumer Affairs	7	4	3	0
The Family Agency	112	77	30	5
The Adoption Board	3	0	3	0
The Consumer Ombudsman	2	1	1	0
The National Consumer Agency	3	3	0	0
Danish Veterinary and Food Administration	1	1	0	0
<i>Total</i>	128	86	37	5
<b>10. Ministry of Refugee, Immigration and Integration Affairs</b>				
Department of Refugee, Immigration and Integration Affairs	279	187	78	14
Refugee Board	43	43	0	0
Immigration Service	124	99	21	4
<i>Total</i>	446	329	99	18
<b>11. Ministry of Food, Agriculture and Fisheries</b>				
Department of Food, Agriculture and Fisheries	13	9	2	2
Directorate for Food, Fisheries and Agri Business	11	8	1	2
Genetic Resources Committee	1	1	0	0
Danish Plant Directorate	3	3	0	0
<i>Total</i>	28	21	3	4

Table 1: All concluded cases 2005 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
<b>12. Ministry of Science, Technology and Innovation</b>				
Department of Science, Technology and Innovation	32	22	5	5
National IT and Telecom Agency	1	1	0	0
The Telecommunications Complaints Board	1	1	0	0
The Danish Committees on Scientific Dishonesty	2	1	1	0
Universities and institutions of higher education	21	19	2	0
<i>Total</i>	57	44	8	5
<b>13. Ministry of Taxation</b>				
Department of Taxation	25	15	5	5
The Danish National Tax Tribunal	19	18	1	0
Central Customs and Tax Administration	25	18	5	2
Regional Customs and Tax Administration, total	18	17	1	0
SKAT (Central taxation authority)	6	4	2	0
SKAT (regional taxation authorities)	3	3	0	0
Assessment authorities (motor vehicles)	4	4	0	0
Assessment authorities (property)	1	1	0	0
<i>Total</i>	101	80	14	7
<b>14. Ministry of Social Affairs</b>				
Department of Social Affairs	15	12	3	0
Social Appeals Board	128	84	38	6
National Social Security Agency	21	21	0	0
(Regional) social boards of appeal, total	254	146	103	5
The Gender Equality Board	2	1	1	0
The Danish Supervisory Board of Psychological Practice	5	4	1	0
<i>Total</i>	425	268	146	11

Table 1: All concluded cases 2005 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommendation etc.	Criticism, recommendation etc.
<b>15. Prime Minister's Office</b>				
Department of the Prime Minister's Office	14	7	3	4
<i>Total</i>	14	7	3	4
<b>16. Ministry of Transport and Energy</b>				
Department of Transport and Energy	30	20	7	3
DSB (national railway company)	1	1	0	0
Road Safety and Transport Agency	6	6	0	0
The Complaints Board for allotment of places of call in harbours	1	1	0	0
Road Transport Council	14	9	5	0
Manning Board for certain off-shore installations	1	1	0	0
Expropriation Committee	2	1	1	0
Danish Energy Savings Fund	1	1	0	0
The Energy Board of Appeal	9	7	2	0
Danish Energy Authority	2	2	0	0
The Danish Energy Regulatory Authority	1	1	0	0
The Civil Aviation Administration	1	1	0	0
The State Commissioners for Expropriations	1	1	0	0
The Danish Motor Vehicle Inspection Office	1	1	0	0
<i>Total</i>	71	53	15	3
<b>17. Ministry of Foreign Affairs</b>				
Department of Foreign Affairs	15	8	2	5
Danish delegations abroad	4	4	0	0
<i>Total</i>	19	12	2	5

Table 1: All concluded cases 2005 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommendation etc.	Criticism, recommendation etc.
<b>18. Ministry of Education</b>				
Department of Education	13	10	2	1
National Authority for Institutional Affairs	4	3	1	0
National Education Authority	7	5	2	0
Students' Grants and Loan Scheme Appeal Board	1	1	0	0
State Educational Grant and Loan Agency	6	6	0	0
Polytechnic	1	1	0	0
State Football Pools Youth Scheme Board	1	1	0	0
Various institutions of higher education	1	1	0	0
The Board of EU Enlightenment	3	3	0	0
The Complaints Board for Extensive Special Education	6	6	0	0
<i>Total</i>	43	37	5	1
<b>19. Ministry of Economic and Business Affairs</b>				
Department of Economic and Business Affairs	12	10	1	1
Danish Commerce and Companies Agency	2	2	0	0
National Agency for Enterprise and Housing	1	1	0	0
The Consumer Complaints Board	1	1	0	0
The National Consumer Agency	1	1	0	0
The Consumer Ombudsman	1	1	0	0
Danish Competition Complaints Board	1	0	0	1
Danish Competition Authority	2	2	0	0
Danish Energy Savings Fund	1	0	0	1
Danish Energy Authority	1	1	0	0
Energy Board of Appeal	1	1	0	0
Danish Energy Regulatory Authority	1	1	0	0

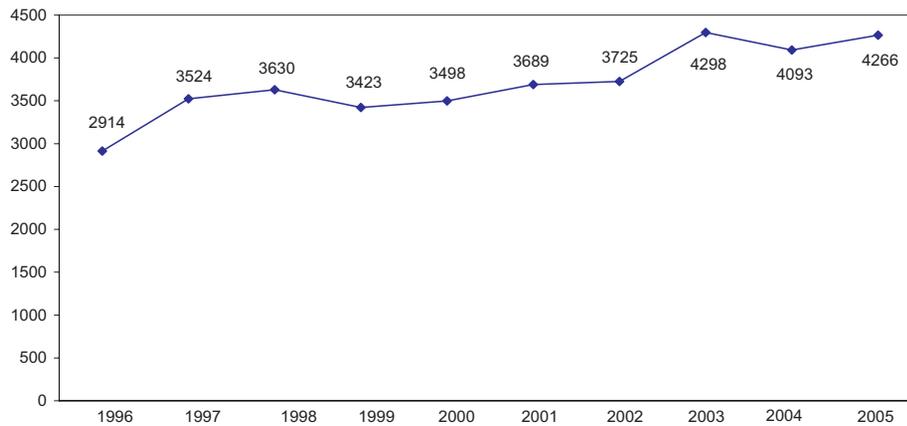
Table 1: All concluded cases 2005 Authority etc.	Cases in total	Cases rejected	Investigated	
			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
Danish Financial Supervisory Authority	2	2	0	0
Danish Patent and Trademark Office	1	1	0	0
The Authorised Accountants Supervisory Authority	2	2	0	0
The Danish Safety Technology Authority	3	3	0	0
The Danish Maritime Authority	5	5	0	0
<i>Total</i>	38	34	1	3
<i>State authorities, total</i>	2,745	1,922	662	161

Table 1A: All concluded cases 2005 Authority etc.	Cases in total	Cases Rejected	Investigated	
			No criticism, recommenda- tion etc.	Criticism, recommenda- tion etc.
A. State authorities	2,745	1,922	662	161
B. Local government authorities	1,045	937	72	36
C. Other authorities under the jurisdiction of the Ombudsman	1	1	0	0
D. Administrative authorities under the jurisdiction of the Ombudsman, total	3,791	2,860	734	197
E. Institutions etc. outside the jurisdiction of the Ombudsman, total	276	276		
F. Cases not related to specific institutions etc.	216	216		
<i>Year total</i>	4,283	3,352	734	197

## ● Graphics

**Figure 1**

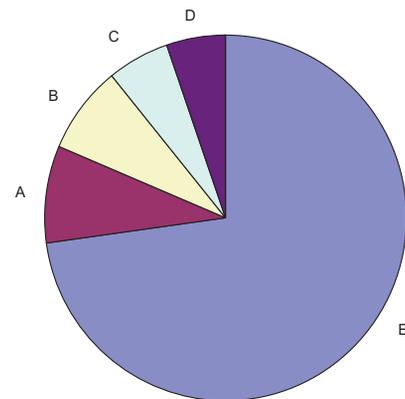
Number of cases registered for the past ten years



**Figure 2**

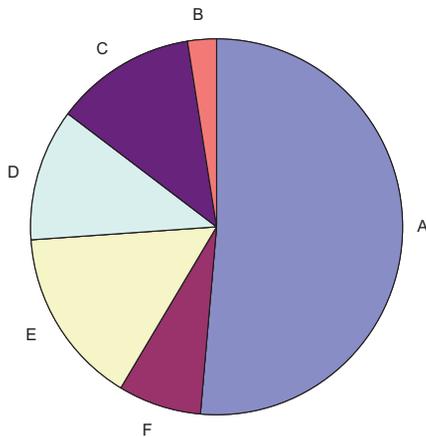
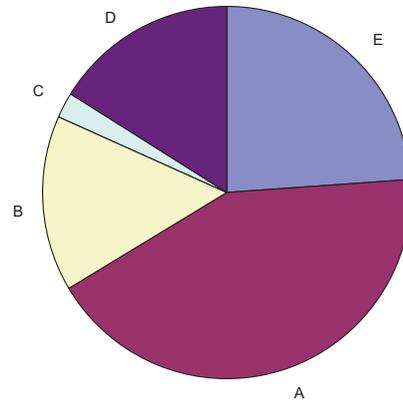
Categories of cases investigated to conclusion (2005)

A. Case processing.....	8.7 %
B. Case processing time.....	7.6 %
C. Services.....	5.6 %
D. General.....	5.3 %
E. Decisions.....	72.8 %



**Figure 3**  
 Categories of cases in which criticism or recommendations were expressed (2005)

A. Decisions .....	42.6 %
B. Case processing time.....	15.2 %
C. Services.....	2.0 %
D. General .....	16.2 %
E. Case processing.....	23.9 %



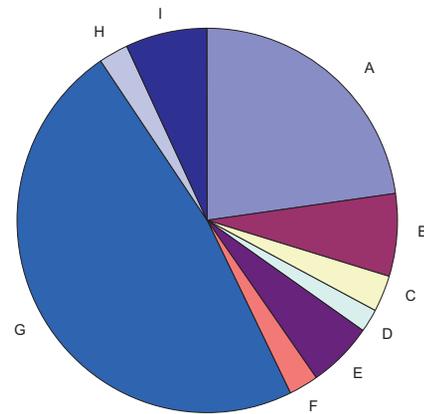
**Figure 4**  
 Cases rejected, in categories (2005)

A. Decisions .....	51.3 %
B. Services .....	2.6 %
C. Case processing.....	12.2 %
D. Miscellaneous .....	11.4 %
E. Case processing time.....	15.2 %
F. General .....	7.3 %

**Figure 5**

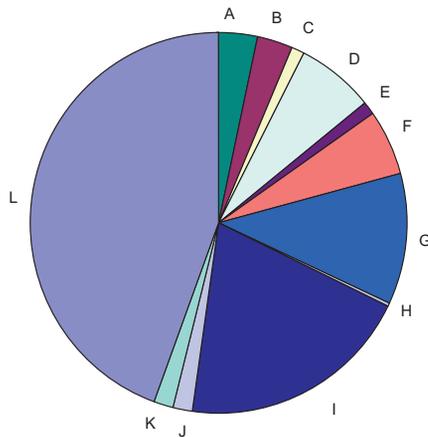
Cases closed, in categories (2005)

A.	Social benefits and labour law.....	22.9 %
B.	Environment, building and housing.....	6.8 %
C.	Taxation, budget and economy.....	3.1 %
D.	Business regulation etc. ....	2.0 %
E.	Local authorities, health, foreign affairs and defence .....	5.5 %
F.	Transport, communication and roads....	2.5 %
G.	Judiciary matters, aliens etc. ....	47.9 %
H.	Education, science, church and culture.....	2.5 %
I.	Human resource matters etc.....	6.9 %



**Figure 6**

Reasons for rejection, in categories (2005)

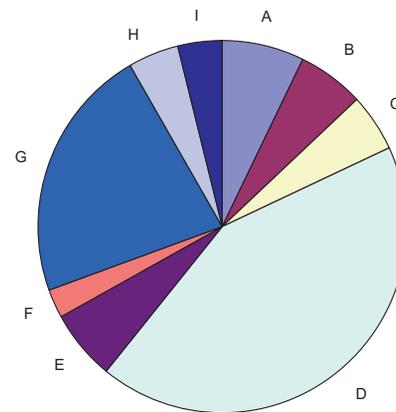


A.	Lodged too late.....	3.4 %
B.	Judgments .....	3.1 %
C.	The Danish Parliament.....	1.1 %
D.	Outside jurisdiction .....	6.6 %
E.	Unused channel of complaint .....	1.0 %
F.	Complaint not sufficiently defined.....	5.7 %
G.	Inquiries without complaint.....	10.9 %
H.	Anonymous complaints.....	0.3 %
I.	Other inquiries .....	20.1 %
J.	Reopened after hearing.....	1.5 %
K.	Own initiative.....	1.7 %
L.	Preliminary rejection – unused channel of complaint.....	44.5 %

**Figure 7**

Total of municipal cases closed in 2005,  
in categories

A.	Human resource administration .....	7.3 %
B.	Taxation.....	5.8 %
C.	Schools and culture .....	5.0 %
D.	Social benefits and health.....	42.8 %
E.	Social and psychiatric services .....	6.0 %
F.	Hospitals .....	2.7 %
G.	Technology and environment.....	22.1 %
H.	Other administrative bodies .....	6.4 %
I.	Various .....	3.8 %





# Part 4

## SUMMARIES

## 1. Ministry of Employment

*Of 110 cases closed in 2005, 32 were investigated. Criticism and/or recommendations were expressed in four cases. One case is summarized below.*

### 1. Labour market council's decision regarding distortion of competition in a local authority's use of cash benefit recipients to clean for old age pensioners

The head of region for the Danish Employment Service's and the Ministry of Employment's obligation to supervise

An association complained to a labour market council that a local authority used cash benefit recipients in individual job training to clean for old age pensioners. The association believed that this was distortion of competition. The labour market council was asked to decide whether the activation conflicted with Sections 31 to 33 in the government order regarding activation of cash benefit recipients pursuant to the act on an active social policy.

The labour market council refused that this was distortion of competition.

In connection with the case, the Ombudsman stated that the inquisitorial procedure entails that it is the responsibility of the authority that the case is sufficiently elucidated. The elucidation of facts can usually take place in cooperation with the parties, for example by asking the parties questions to clear up matters. Normally, the authority can elucidate the legal facts on its own if the authority is capable of interpreting and filling out the relevant rules. The authority can also obtain statements from the relevant ministry/authorities if there is a need for assistance in relation to the clarification of the legal basis.

The Ombudsman criticized the labour market council's elucidation basis and argumentation.

Overall, the Ombudsman found that the council's concrete consideration of the case provided grounds for severe criticism.

Pursuant to the law, the head of region for the Danish Employment Service observes that the labour market council's decisions are legal. The Ombudsman considered it most regrettable that the head of region did not even find reason to doubt the legality of the labour market council's decisions and therefore did not make an official report to the Ministry of Employment.

Furthermore, the Ombudsman made a statement regarding the contents of the Ministry of Employment's statutory obligation to supervise. A statutory obligation to supervise must entail an obligation for the Ministry to make a statement to the council (and the head of region) if the Ministry assesses that the labour market council's decisions are regarded as illegal, and permit the Ministry to make a recommendation to the labour market council. (Ref. no. 2003-3687-022).

## 2. Ministry of Finance

*Of 20 cases closed in 2005, eight were investigated. Criticism and/or recommendations were expressed in three cases. One case is summarized below.*

### 1. Refusal of access to answered questionnaires

#### Anonymity

A journalist asked the Ministry of Finance for access to ministers' and heads of department's answers to a questionnaire from a committee appointed by the Ministry regarding civil servants' counselling and assistance to the government and its ministers. The participants in the survey had been promised anonymity. The Ministry of Finance gave as reason that this was an inquiry of quite specific public matters of such a character that the Ministry estimated that anonymity was a prerequisite for the collection of the material. The Ministry therefore refused the request for access to files, referring to Section 13, subsection (1.6) in the Access to Public Administration Files Act, as the Ministry would not violate the anonymity.

The Ombudsman stated that the provisions in the Access to Public Administration Files Act are invariable in the sense that an authority cannot make a valid decision about or agree to discretion beyond what follows from the provisions of the Act. However, it could not be denied that in cases like the present the authority may be able to estimate in advance and with necessary certainty whether the considerations that speak against access to files pursuant to Section

13 in the Access to Public Administration Files Act carry such weight that they may result in a refusal of access to files. Accordingly, the authority may, also without violating the Access to Public Administration Files Act, agree to anonymity and in its future administration of requests for access to files make decisions in accordance with this if the considerations that speak against access to files do not weaken considerably over time.

The Ombudsman did not think that the considerations indicated by the Ministry of Finance to support the securing of anonymity in the present case could be disallowed as subjective or irrelevant to Section 13, subsection (1.6) in the Access to Public Administration Files Act. Therefore, the Ombudsman did not criticize that the Ministry of Finance refused access to the information in the answered questionnaires that could be traced to particular persons. On the other hand, the Ombudsman did not think that the Ministry of Finance could refuse access to the remaining information in the questionnaires, cf. Section 13, subsection (2) in the Access to Public Administration Files Act. (Ref. no. 2004-2237-201).

### 3. Ministry of Defense

*Of 12 cases closed in 2005, one was investigated. No criticism and/or recommendations were expressed in the case. No cases are summarized.*

### 4. Ministry of the Interior and Health

*Of 249 cases closed in 2005, 62 were investigated. Criticism and/or recommendations were expressed in nine cases. Four cases are summarized below.*

#### 1. The supervising authorities' elucidation of and competence in a case concerning a co-operative housing association

A local authority and a supervisory committee considered a case concerning various issues in a co-operative housing association. Among other things, the housing association collected an additional contribution from one of its divisions for preparing the division's heating and water accounts. Furthermore, the housing association had raised a loan to carry out a number of jobs in the same division. Finally, the housing association had received an order from the local authority about entering bank fees for transference of funds into the accounts.

The Ombudsman decided that he would not investigate the part of the case that concerned bank transference fees, but he submitted a preliminary report about the other aspects of the case. It appeared from the report that it gave grounds for criticism that the supervisory committee had made a decision re-

garding the preparation of the heating and water accounts without first asking the National Agency of Enterprise and Construction for a statement. Also, the supervisory committee ought to have considered the rules concerning resident democracy when treating the matter of the raised loan.

The Ombudsman found that there was basis for requesting that the state county (which had taken over the supervisory committee's powers) resumed the case. In his final report the Ombudsman maintained this opinion. However, the resumption of the case was no longer an issue since the state county had, after obtaining a statement from the Ministry of Social Affairs (which had taken over the field of responsibility from the National Agency of Enterprise and Construction), decided to resume the case. (Ref. no. 2003-0273-163).

## 2. Refusal of access to electronic spreadsheet

Internal document. Increased access to documents

An editor asked the National Board of Health for access to an electronic spreadsheet which the Board had prepared on the basis of reports from health inspectors in connection with inspections of nursing homes.

The National Board of Health refused to grant access to the spreadsheet, pointing out that it was internal work material. The Board would only grant access to each of the approximately 1,100 reports in hard copy.

The editor complained to the Ministry of the Interior and Health about the refusal. The editor stated that to release the reports individually would entail a significant amount of work for him because in that case he would have to enter the information into a spreadsheet himself.

The Ministry of the Interior and Health found that the refusal of access to files with reference to Section 7 in the Access to Public Administration Files Act about exemption of internal documents was legitimate. The Ministry wrote that the spreadsheet had been prepared for use in a multidisciplinary analysis in the National Board of Health, thus was merely a tool for processing a large number of information in an easy manner.

In the course of the Ombudsman's consideration of the case, the Ministry of the Interior and Health

stated that the authorities had considered but refused access to the spreadsheet in pursuance of the principle of increased access to public records.

The Ombudsman raised no objections to the authorities' having considered the spreadsheet internal work material. Concerning the authorities' refusal of increased access to files, the Ombudsman stated that attention to the consideration for protecting an authority's internal decision-making process must in general be regarded as objective. However, after having gone through the spreadsheet the Ombudsman noted that it only contained a grouping of the information in the received reports. No closer internal processing or analysis had been performed. In the Ombudsman's opinion, access to the spreadsheet would not disclose information about the Board's internal deliberations et cetera.

On this background the Ombudsman did not find that the authorities could rightfully refuse increased access to the spreadsheet out of consideration for the internal decision-making process. Since the authorities' refusal of increased access to files was not based on any other argument, the Ombudsman recommended that the Ministry of the Interior and Health resume the case. (Ref. no. 2004-0046-401).

## 3. Refusal of access to information about reporting hospital when side-effects from drugs are reported

A journalist was granted access by the Danish Medicines Agency to the Agency's side-effects report system concerning a particular drug. It appeared that in 2000-2003 there had been four reports of side-effects

from the drug. In connection with one of the reports the journalist asked to be informed which hospital had made the report. The Danish Medicines Agency refused this, pointing out that the information could

make it possible to identify the treated patient. The Ministry of the Interior and Health confirmed the refusal. The journalist then complained to the Ombudsman.

The Ombudsman stated that information about a person's health is confidential and under the duty of professional secrecy. However, passing on such information will not imply a breach of confidentiality if the information is passed on in a completely anonymous form. The Ombudsman found it difficult to see how information about which hospital had reported the side-effect implied that the public could find out the identity of the patient concerned. In this connection the Ombudsman remarked that even if publica-

tion of the name of the hospital lead to applications to the hospital from the public, the hospital staff was under the duty of secrecy. Accordingly, one would not suppose that such applications implied an enhanced risk that the patient's identity was revealed.

On this background the Ombudsman recommended that the Ministry of the Interior and Health resume the case with a view to assessing whether the journalist could be informed of the name of the reporting hospital. On 24 February 2006 the Ministry of the Interior and Health announced that the Ministry had granted the journalist access to information concerning which hospital had reported the side-effect. (Ref. no. 2005-2911-401).

#### 4. Grounds for refusal of single reimbursement for arthritis drug

A doctor in private practice had applied for reimbursement for a particular drug on behalf of a patient who had been suffering from severe arthritis for 35 years. The Danish Medicines Agency refused the application with a brief explanation.

On the basis of a complaint from the patient the Ombudsman initiated an investigation of the Agency's grounds for the refusal in particular.

The Ombudsman stated that adequate grounds should explain why the authority has come to this result. The Ombudsman did not find that the Danish Medicines Agency had complied with this demand

since the Agency had not specifically stated which actual health concerns and treatment options the decision was based on. On that background the Ombudsman recommended that the Agency resumed the case. In this connection the Ombudsman made some remarks about the authorities' obligation to guide if an authority orders a party to participate in the elucidation of a case.

The Danish Medicines Agency then resumed the case and gave the patient's doctor an amplified explanation. (Ref. no. 2005-1639-421).

## 5. Ministry of Justice

*Of 844 cases closed in 2005, 287 were investigated. Criticism and/or recommendations were expressed in 69 cases. Six cases are summarized below.*

### 1. Job application in connection with introduction of a new administrative structure

A state prison introduced a new structure and advertised a number of leading positions internally in that connection. The positions were to be distributed among the existing staff. An employee who applied for a position in a higher wage bracket did not get the position, but was offered another position on unchanged terms.

Basically, the Ombudsman did not think that an administrative authority's decisions regarding appointment of staff in situations like the present should be treated as decisions covered by the Public Administration Act. If, in connection with a general structural change, questions arise concerning dis-

missal, transfer of public servants or significant changes to wage and working conditions, including promotion of an employee, the management's decisions about these questions must, however, be regarded as decisions covered by the Public Administration Act.

Since the employee had applied for a promotion, the state prison's refusal of the application should have been accompanied by grounds and guidance on appeal. However, the Ombudsman did not have sufficient foundation for criticizing the state prison, since the matter could not be considered indisputable. (Ref. no. 2003-3366-819).

### 2. Withheld consent to license to keep a restaurant open after hours

The licensing bench refused a restaurant keeper's application for a license to stay open after hours pursuant to the act on restaurants, Section 28, subsection (4). The grounds given were that the chief constable had withheld the consent to the license.

The Ombudsman stated that the chief constable's decision to withhold the consent – certainly in the cases where the chief constable withholds his or her consent to keep a restaurant open after hours – is a decision in the sense of the Public Administration Act. Accordingly, the restaurant keeper should have been heard concerning the two matters that caused

the chief constable to withhold the consent and were detrimental to the restaurant keeper. Or the chief constable should at any rate have decided on whether one of the exceptions in Section 19, subsection (2) in the Public Administration Act was applicable.

The Ombudsman did not have sufficient basis for recommending that the case was resumed. The Ombudsman pointed out that the lacking hearing of the party could not be assumed to have influenced the result of the chief constable's discretionary decision which in other respects the Ombudsman did not find basis for criticizing. (Ref. no. 2004-2035-619).

### 3. Early conditional release in pursuance of Section 40 a, subsection (1.2) in the penal code Good personal conditions. Discretion under rule?

A 57-year-old inmate complained that the Prison and Probation Service had demanded that the inmate had a job as a stipulation for granting conditional release after half the sentence had been served. The background for the decision was the Service's practice according to which an inmate – who is well and of working age – must have a job or be in training in order to fulfill a stipulation about having good personal conditions. This was announced to the inmate in a subsequent letter in which the Service amplified the grounds for the decision. In the first statement to the Ombudsman the Service referred to the amplified grounds.

In a preliminary statement the Ombudsman stated that the wording of Section 40 a in the penal code and the connection between the individual subsections in the provision clearly speak against the laying down of invariable terms for conditional release apart from those mentioned in the code. The Ombudsman also expressed as his preliminary opinion that the Service's practice lacked the necessary legal authority and therefore was illegal.

The Service regretted that the description of practice in the amplified grounds had been phrased too

generally and invariably and wrote that it depends on a concrete assessment of each individual case whether a job et cetera will be required.

The Ombudsman then stated that it would have been appropriate if this had been elucidated in connection with the Service's answer to the Ombudsman's written hearing.

The Ombudsman concluded that the Service shared the Ombudsman's perception of the legal basis, and furthermore joined the Service in its regrets concerning the Service's description of practice to the inmate. Since the Service had indicated indirectly that it was prepared to resume the consideration of the present case – and a number of similar cases – the Ombudsman refrained from recommending this to the Service.

The Service made a new decision concerning the inmate. In the decision, the Service maintained the stipulation – now with concrete grounds. The inmate again complained to the Ombudsman who subsequently launched another investigation which has not yet been concluded. (Ref. no. 2004-3269-623).

### 4. Refusal of free legal aid

Procuring of information with no significance to the decision in the case

A tax payer was ordered to pay a supplementary tax of 3,000 DKK for having handed in his tax return too late. The tax payer took out a summons against the tax authorities and applied for free legal aid in that connection.

The state county refused the application on the grounds that the tax payer had no reasonable motive for litigating since the subject-matter of the action –

compared with the potential cost of the case – must be regarded as trifling. The state county had initially requested that the tax payer submit documentation for his income during the preceding three months. However, the refusal of free legal aid was made with reference to the size of the demand exclusively. The Civil Affairs Agency later confirmed the state county's decision.

The Ombudsman did not find that there was basis for criticizing that the authorities had refused the citizen's request for free legal aid on the grounds that the subject-matter of the action must be regarded as trifling.

However, the Ombudsman considered it regrettable that the state county obtained supplementary in-

formation about the tax payer's income, since it must have been clear to the state county on the basis of the information already present in the case that the application could not be complied with. Furthermore, the Ombudsman considered it regrettable that the Civil Affairs Agency had not called attention to this matter. (Ref. no. 2004-3295-630).

## 5. Refusal of compensation for victim of violence and the authority's lacking elucidation of the case

Inquisitorial procedure, hearing of parties, and guidance

A 90-year-old woman who used a rollator was knocked over and broke her hip in connection with a theft in a pharmacy. The Criminal Injuries Compensation Board refused to compensate her because the Board did not find that it could be assumed with sufficient certainty that the injury was caused in a breach of the penal code. The Board subsequently pointed out that a video recording – of which the Board only had the police's description – and a witness statement showed that the woman had been pushed over in a random accident.

The Ombudsman found that the Board should rather have assessed whether the incident in the pharmacy could fall under Section 249 in the penal code, which concerns negligent bodily harm.

The Ombudsman criticized the Board for not having attempted to elucidate the sequence of events in a better way than was the case before making its decision. Instead, the Board had followed a practice according to which audio tapes, video tapes, inspections or verbal evidence were not used in connection with the Board's consideration of cases. The Board

had not been precluded from viewing the video tape or obtaining a statement from the injured woman or the witness.

The Ombudsman concurred in the Board's regret that the parties had not been heard before the decision was made. Finally, the Ombudsman criticized the Board for not having guided the injured woman on her access to complain to the Ombudsman about the Board's decision after having been asked to do so, and for not having informed the woman that the Board's decision could be presented before the courts, earlier than was the case.

The Board took note of the Ombudsman's preliminary statement and found that the incident was covered by the act on compensation for victims. The injured woman was awarded 30,000 DKK in damages.

In his final statement, the Ombudsman recommended to the Board that in future the Board uses the relevant means for elucidating cases sufficiently, as the legislation and common rules of administrative law render possible. (Ref. no. 2004-0081-660).

## 6. Consideration of cases and case processing time in the Danish Prison and Probation Service

An inmate in a state prison complained on 23 January 2005 about the time it had taken the Danish Prison and Probation Service to consider an application to the Service made on 27 February 2004.

On 11 March 2005 the Service made its decision concerning the case. During the year that it took to consider the case the Danish Prison and Probation Service gave twelve announcements to the inmate concerning the expected remaining case processing time. In all the announcements the remaining case processing time was indicated as a few weeks.

The Ombudsman stated that overall he found that the Service's consideration of the present case gave grounds for severe criticism. Thus, the Ombudsman emphasized that the Service had repeatedly held out prospects to the complainant of a remaining case processing time that the Service did not keep, and that there was no consistent follow-up in the instances where the promised case processing time could not be kept. In this connection, the Ombudsman mentioned that he had stated on former occasions that in instances where an announced case processing time cannot be kept, the authority must inform the party of this already at the time when it must be clear to the authority that the announced case processing time cannot be kept. The Ombudsman mentioned that he had come across similar instances in other cases from the Service.

The Ombudsman recommended that the Danish Prison and Probation Service make an overall assessment of the matter of the Service's case processing time – particularly the issue of notification of complainants and of answering reminders. At the same time, the Ombudsman informed the Service that it was his opinion that a solution to the problem was urgently needed, and that initiatives – preliminary, if necessary – ought to be launched immediately, if possible.

Concerning the answering of two specific reminders in particular, respectively from the inmate and the legal aid which had also complained on the inmate's behalf, the Ombudsman stated that it was regrettable that the reminders were not answered as soon as possible. In that connection, the Ombudsman remarked that considering the overall course of the case at that time, the fact that the Service had given information about an expected case processing time which lay beyond the dates of the reminders did not release the Service from answering the reminders.

The Ombudsman subsequently received notification from the Service that the Service had – after the Ombudsman's recommendation – initiated a thorough scrutiny and revision of the relevant office's consideration of cases in general. In this connection, the Service mentioned a number of concrete initiatives which the Service was planning to launch. (Ref. no. 2005-2877-600).

## 6. Ministry of Ecclesiastical Affairs

*Of 35 cases closed in 2005, seven were investigated. Criticism and/or recommendations were expressed in five cases. Two cases are summarized below.*

### 1. Increased access to files in personnel case

A member of a congregation asked the bishop to be informed of the state of a complaint case that some local church councils had raised concerning a vicar's attention to the job. The bishop refused to speak on the subject since it was a personnel case. The Ministry of Ecclesiastical Affairs endorsed the bishop's decision, observing that the desired information was comprehended by the duty of professional secrecy. The Ministry later stated to the Ombudsman that the information was included in a personnel case which as such was exempt from the right to access to files in pursuance of Section 2, subsection (2.2) in the Access to Public Administration Files Act, and that the information in the case must therefore be regarded as comprehended by the duty of secrecy.

The Ombudsman agreed that the present case was exempt from the right to access to files. However, the Ministry's reference to the duty of secrecy and the

fact that the Ministry had not taken a position on whether the member of the congregation ought to be given access to files pursuant to the principle of increased access to public records, gave the Ombudsman occasion for some general remarks concerning the relationship between the rules on the duty of secrecy and the exemption clause in Section 2, subsection (2.2) in the Access to Public Administration Files Act.

The Ombudsman stated that basically there is nothing to prevent granting increased access to public records concerning information which is only exempt from the right to access to files because it is part of cases comprehended by Section 2, subsection (2.2) in the Access to Public Administration Files Act. The Ombudsman recommended that the Ministry resume its consideration of the case. (Ref. no. 2005-0241-701).

### 2. Vicar divested of his duty as funeral authority

The Ministry of Ecclesiastical Affairs divested a vicar of his duty as funeral authority and at the same time gave the vicar a severe criticism for having contributed to create doubt about his attention to this duty. Despite some uncertainty it must be assumed that the decision was not a disciplinary reaction comprehended by rules in the statute relating to public servants regarding disciplinary proceedings – as the Min-

istry of Ecclesiastical Affairs originally intended – but a discretionary reaction.

The Ombudsman did not find that the criticism was warranted since a criticism must be directed towards the future to be considered as a discretionary reaction, thus be given with a view to changing the employee's future behaviour. Furthermore, the Ombudsman found that there was significant doubt as to whether there was a sufficiently certain basis for the

decision to divest the vicar of his duty as funeral authority.

The Ministry of Ecclesiastical Affairs ought to have heard the vicar when it was clear that there would not be a disciplinary case, but a discretionary decision. Furthermore, the rules regarding grounds were disregarded.

The Ombudsman stated that the vagueness with which the two letters from the Ministry of Ecclesiastical Affairs to the vicar were phrased was very re-

grettable due to the serious nature of the decisions concerning personnel law in the case.

The Ombudsman recommended that the case was resumed and that a new decision was made in light of what the Ombudsman had stated.

The Ministry took note of the Ombudsman's statement and left it to the bishop to decide when the duty of funeral authority should be given back to the vicar. (Ref. no. 2003-2993-812).

## 7. Ministry of Culture

*Of 36 cases closed in 2005, nine were investigated. Criticism and/or recommendations were expressed in three cases. Two cases are summarized below.*

### 1. Access to information about local TV station

A journalist complained that a local TV station had refused his request for access to various information about the TV station and its viewer club. Among other things, the request included information about the station's entertainment expenses and about the station manager's wages.

As far as the vouchers from associates' visits to restaurants with guests were concerned, the Ombudsman did not find that he could criticize the refusal of access to files.

However, the Ombudsman found that vouchers concerning expenses for purchase of wine and gifts and flowers for receptions or as gifts to business partners or employees on birthdays, in connection with resignation or similar occasions, were comprehended by the right to access to files unless the individual voucher could be regarded as comprehended by one of the exemption options in the Access to Public Ad-

ministration Files Act. The Ombudsman therefore recommended that the TV station resumed the consideration of this part of the case.

Furthermore, the Ombudsman recommended that the station resumed the consideration of the part of the case that concerned access to information about the station manager's wages, with a view to deciding whether the provisions in Section 13 in the Access to Public Administration Files Act could justify a refusal of access to the information. The Ombudsman also raised the question of whether the station manager might be disqualified from considering the aspects of the case relating to arrangements in which the manager had participated himself, and to his own wages.

Finally, the Ombudsman criticized the grounds for the refusal given by the TV station to the journalist. (Ref. no. 2004-2311-501).

## 2. Refusal of access to report prepared as part of in-house audit

DR (the Danish Broadcasting Corporation) refused to grant a journalist access to a report prepared by an accountancy firm that did DR's in-house audit. DR's reason for the refusal was that the document in question was internal.

The Ombudsman stated that the accountancy firm was an independent legal unit and not a part of DR. On this background, the Ombudsman did not agree

with DR that the documents exchanged between DR and the accountancy firm as part of the firm's conduct of the in-house audit could be regarded as internal correspondence within the meaning of the Access to Public Administration Files Act. On the basis of this, the Ombudsman recommended that DR resume the case and reconsider the journalist's request for access to files. (Ref. no. 2005-2371-501).

## 8. Ministry of Environment

*Of 69 cases closed in 2005, eighteen were investigated. Criticism and/or recommendations were expressed in two cases. No cases are summarized.*

## 9. Ministry for Family and Consumer Affairs

*Of 128 cases closed in 2005, 42 were investigated. Criticism and/or recommendations were expressed in five cases. One case is summarized below.*

### 1. Authorities' publication of cases on own initiative

The objectivity principle in administrative law

An airline company complained that the Consumer Ombudsman had published a case via the National Consumer Agency's webpage in which the Consumer Ombudsman had reported the company to the police. The publication of the case included the name of the company.

The Ombudsman established that the rules regarding the duty of professional secrecy did not in themselves prevent the publication. However, the Ombudsman stated that pursuant to the general objectivity principle in administrative law an authority

cannot without legal title or (other) objective reason publish information about a company which must be considered as a liability to the company.

In this connection, the Ombudsman referred to the principles in Section 5 in the Act on Processing of Personal Data. Furthermore, it must be assumed that in these situations an authority is also subjected to certain limitations pursuant to the principles of good administrative practice.

Considering that the Consumer Ombudsman is authorized to publish cases to some extent, and that

the publication took place after a concrete assessment in which relevant concerns were implicated, the Ombudsman did not think that there was basis for criti-

cizing the Consumer Ombudsman. (Ref. no. 2005-0061-303).

## 10. Ministry of Refugee, Immigration and Integration Affairs

*Of 446 cases closed in 2005, 117 were investigated. Criticism and/or recommendations were expressed in eighteen cases. Five cases are summarized below.*

### 1. Access to files in case concerning residence permit

A man asked for access to files in his spouse's case concerning residence permit. The Ministry of Refugee, Immigration and Integration Affairs refused to grant the man access to information that would render him capable of identifying persons who had given information to the immigration authorities for their consideration of the spouse's case. The Ministry pointed out that one of the persons who had given information, had wished to be anonymous because this person feared reprisals from the man. The Ministry also stated that the spouse had been granted a residence permit.

The Ombudsman stated that an exception of information to the party out of consideration for other pri-

vate interests presupposed a knowledge of the harmful effects that would be the result of passing on the information. In the present case where the Ministry had no specific information about the character of the feared reprisals or the basis for this fear, the Ombudsman did not find that the Ministry had had sufficient reason to except information. The Ombudsman therefore recommended that the Ministry resume the case.

After having assessed the matter again, the Ministry granted the man access to the originally excepted information. (Ref. no. 2003-3404-601).

### 2. Refusal of residence permit pursuant to Section 9, subsection (2.2) and Section 9, subsection (2.5) in the act on aliens

A citizen from Bosnia-Herzegovina entered Denmark in February 2000 with her 5-year-old son. The following month her spouse entered Denmark.

On the basis of her experiences in the former Yugoslavia and her medical circumstances the woman applied for residence permit by the special rules that apply to persons from the former Yugoslavia (Section 9, subsection (2.5) in the act on aliens) according to

which single women with children, among others, can obtain residence permit, and humanitarian residence permit (Section 9, subsection (2.2) in the act on aliens). The applications were refused since neither the Immigration Agency nor the Ministry of Refugee, Immigration and Integration Affairs found that the character of the woman's medical circumstances

made her eligible to be comprehended by the provisions mentioned.

The woman, who had become divorced in the period from the applications were handed in to the decisions were made, subsequently asked that the cases be resumed. The Immigration Agency refused to resume the case concerning residence permit, stating that no new information had appeared. In its statement to the Ombudsman the Agency remarked that the woman's divorce had no significance since according to information received she had family in Bosnia. In his assessment of the case, the Ombudsman took for his basis that the woman's social network in her native country only had become significant after her divorce, and that she had not given the authorities information about her social network in her native country since her asylum application more than three and a half years earlier. On the contrary, she had in interviews with psychologists given altered information about where her family members had stayed in the intervening period.

The Ombudsman gave as his opinion that the relevant facts of the case had been changed in consequence of the woman's divorce, and that the author-

ities could no longer use information that was more than three and a half years old as their basis, but had to make a current investigation of the woman's social network in her native country. Furthermore, the Ombudsman stated that the implication of information from the asylum case which spoke against the request for resumption required a hearing of the woman. The Ombudsman recommended that the authorities resume the case.

The consideration of the case concerning humanitarian residence permit was discontinued because of the woman's disappearance. The discontinuation was announced to her lawyer. When the Ministry of Refugee, Immigration and Integration Affairs was informed of the woman's whereabouts, the Ministry made its decision without first informing the woman or her lawyer that the consideration of the case had been resumed. The Ombudsman stated that the Ministry ought to have informed the woman's lawyer of the resumption of the consideration of her case so that the lawyer was given an opportunity to send in current information relevant to the Ministry's assessment of the case. (Ref. no. 2004-4326-643).

### 3. Residence permit

Question of subjective differential treatment. Duty to make notes

An organization complained on behalf of a user about the person concerned having been refused the resumption of a case concerning humanitarian residence permit and filing and consideration of another application for residence permit. The organization maintained that the refusal of the application was expressive of subjective differential treatment compared to another case which the complainant considered to be comparable with the present. Supposedly, the background to the differential treatment was that in the meantime the media had criticized the Minis-

try of Refugee, Immigration and Integration Affairs for exercising subjective, positive differential treatment of cases covered by the media. In this connection the organization also complained about the Ministry's press secretary's influence on the consideration of the present case and other concrete cases.

After having gone through the two cases, the Ombudsman did not find that there was basis for criticizing the Ministry's assessment: that the cases were not comparable in such a way that they ought to have the same outcome. Furthermore, the Ombudsman

did not think that there was sufficient basis for assuming that the background to the refusal of the application for residence permit should be sought in the newspaper coverage of the Ministry's alleged differential treatment. In this connection, the Ombudsman

made some following, more general remarks concerning the extent of the obligation to make notes in relation to the work performed by the Ministry's press secretary. (Ref. no. 2005-1116-642).

#### 4. Refusal of residence permit due to lack of ability to provide

After having worked abroad for a number of years a Danish man, who was approaching retirement age, decided to return to Denmark. In 2002 he therefore came to Denmark with his Philippine wife whom he had known for approximately eight years.

The man was of the opinion that due to sickness, among other things, he could not live in the Philippines, and his wife applied for residence permit on the basis of her marriage. The man, who no longer worked, stated during the consideration of the case that he could provide for his wife with the benefit he received and his capital.

The immigration authorities refused to grant the wife residence permit on the grounds that her husband had not established that he was able to provide for her since neither his benefit nor his capital could enter into the basis for the assessment of his ability to provide. Furthermore, the immigration authorities did not find that the information presented concerning the man's medical circumstances and his possibilities for taking up residence in the Philippines could justify a deviation from the claim for documentation of ability to provide in Section 9, subsection (3) in the act on aliens.

The Ombudsman asked the immigration authorities for a statement both of information concerning the warrant to disregard financial circumstances in assessing the ability to provide, and accounting for the significance to the case of the principle regarding investigation and Article 8 in the European Human Rights Convention.

The Ministry of Refugee, Immigration and Integration Affairs subsequently informed the Ombudsman that the Ministry had decided to change the principles for consideration of capital and resume the present case in order to closer examine the man's health circumstances and possibilities for taking up residence in the Philippines. The Ombudsman then stated that he would discontinue his investigation of the case.

The Ministry of Refugee, Immigration and Integration Affairs subsequently stated that the Ministry had decided to deviate from the claim for documentation of ability to provide, among other things, on account of the man's health circumstances. (Ref. no. 2004-2040-643).

#### 5. Residence permit for parents of a resident in Denmark

A 72-year-old woman was paralyzed to a significant extent after having suffered an embolism in the brain. Less than one and a half months later she travelled to Denmark to visit her son who was a resident in Den-

mark. Shortly after, the woman applied for residence permit on the grounds that she depended on the help she received from her family in Denmark. Medical certificates which showed that due to her medical

condition the woman depended on other people's help for ordinary daily chores entered into the case.

The Danish Immigration Service refused the application. The Ministry of Refugee, Immigration and Integration Affairs confirmed the decision on the grounds that the woman had coped in her native country after having been discharged from hospital. In a statement to the Ombudsman the Ministry remarked that it was decisive to the outcome of the case whether the woman could obtain the necessary care and treatment in her native country.

Since the case did not include detailed information regarding the extent to which the care and treatment

that the woman had received in her native country after the embolism were based on temporary or permanent measures, the Ombudsman stated that as matters stood, it was not possible to conclude that the woman would receive the care and treatment necessary if she returned to her native country.

Furthermore, the Ombudsman criticized that the Ministry had criticized the Danish Immigration Service's grounds in a notice to the Service without informing the woman's lawyer of this. (Ref. no. 2005-0465-643).

## 11. Ministry of Food, Agriculture and Fisheries

*Of 28 cases closed in 2005, seven were investigated. Criticism and/or recommendations were expressed in four cases. One case is summarized below.*

### 1. Annulment of farming duty

A married couple had had their property registered as an agricultural holding in 1999 after having bought a small extra piece of land. In 2001 the couple applied for an annulment of the farming duty which the agricultural commission refused. The couple then complained to the Directorate for Food, Fisheries and Agri Business where the complaint was refused.

The couple complained to the Ombudsman who focussed his investigation on the Directorate's consideration of the agricultural commission's decision. The Directorate only had warrant to control "legal matters".

The Ombudsman stated that "legal matters" could concern both matters connected with the consideration of the case and the decision on the matter. The

Ombudsman then specifically criticized that the Directorate had not re-examined whether the agricultural commission had made its decision on the correct legal basis and with the correct understanding of this, whether the agricultural commission's grounds for the decision met the demands in Section 24 in the Public Administration Act, and whether the agricultural commission's refusal of legal errors having been made when the property was registered as an agricultural holding in 1999 was correct.

The Ombudsman recommended that the Directorate resumed its consideration of the case and re-examined the three legal matters mentioned above. (Ref. no. 2003-0220-340).

## 12. Ministry of Science, Technology and Innovation

*Of 57 cases closed in 2005, thirteen were investigated. Criticism and/or recommendations were expressed in five cases. Three cases are summarized below.*

### 1. Removal of professor to another institute at university

The decision concept. Hearing of parties

A professor was moved from one institute to another at the same university on account of collegial difficulties which the university believed were caused by the professor.

The Ombudsman stated that since the removal was based on matters worthy of reproach the removal must be a decision within the meaning of the Public Administration Act.

The Ombudsman criticized that the authorities had not treated the removal as a decision and (there-

fore) had not heard the parties in pursuance of the rule in Section 19 in the Public Administration Act. Also, the unwritten obligation for a more extensive hearing of parties should have been observed.

The Ministry resumed the case in accordance with the Ombudsman's recommendation, and after having heard the parties the university made a new decision in the case in which the university maintained that the removal was justified. (Ref. no. 2004-3653-814).

### 2. Freedom of speech

Private or official activities. The managerial right

A professor complained to the Ombudsman because the university at which he was employed had infringed on his freedom of speech.

The professor had in a feature article criticized a report prepared by three of his colleagues. He had also summoned people from the business community to a meeting to discuss the business development in the region, and in this connection he had made reference to the critical feature article.

In consequence of the feature article and the summons to the meeting, the rector of the university wrote to the professor, criticizing his behaviour which was characterized as "profoundly disloyal". Among other things, the criticism was based on an agreement that had previously been formed between

the professor and the rector. According to this agreement, the professor must not refer to named persons directly or indirectly in public statements. Furthermore, the rector wrote to those who had been invited to the meeting, pointing out that it was a purely private initiative on the professor's part.

The Ombudsman took as his basis that the professor's criticism of his colleagues and the summons to the meeting were official activities. Therefore, the rules on what public employees may speak about as private persons were not relevant.

The Ombudsman stated that the rector's reactions must be assessed in the light of the managerial right. Where employment in a university is concerned, the managerial right should be exercised with deference

to the rules in the act on universities, among other things.

It was the Ombudsman's opinion that the prohibition of making reference to named persons was not consistent with the rules in the act on universities regarding free science and prompting to participate in the public debate. The part of the rector's criticism which was based on the breach of this prohibition therefore was not justified.

However, the Ombudsman considered that the demand for loyal behaviour towards colleagues in connection with professional criticism, including demands concerning language usage and informing before the criticism is made public, was within the terms of the managerial right. Furthermore, it should

be possible to demand that a professor inform the university management before summoning to a meeting which appeared to have been arranged on behalf of the university, and at which the professor appeared to represent the university's views. Thus, to the extent that the rector's criticism was based on these matters it did not give the Ombudsman occasion for remarks.

Finally, it was the Ombudsman's opinion that as part of the managerial right the rector could approach the invited in order to define the university's role and in that connection clarify that the views presented in the summons to the meeting were the professor's own and not the university's. (Ref. no. 2003-4209-815).

### 3. IT solutions in connection with the local government reform

Securing that basic demands of administrative law are met

In several cases the Ombudsman found that basic demands of administrative law were disregarded in connection with the local authorities' mass administration by means of IT systems. In view of the approaching local government reform the Ombudsman therefore asked the Ministry of Science, Technology

and Innovation, the Ministry of the Interior and Health and Local Government Denmark how they would contribute to securing that the local authorities' IT solutions in connection with the local government reform meet the basic demands of administrative law. (Ref. no. 2005-1620-409).

## 13. Ministry of Taxation

*Of 101 cases closed in 2005, 21 were investigated. Criticism and/or recommendations were expressed in seven cases. One case is summarized below.*

### 1. Access to files for use in pending court case

Competence. Obligation to forward application

In connection with a court case against the Ministry of Taxation a lawyer asked for access to files concerning a company.

The Ministry of Taxation refused the access without being in possession of the documents which the application concerned. The Ministry of Taxation

pointed out to the Ombudsman that within the domain of the entire Ministry it was the Ministry's Department that dealt with the court cases, thus assessed whether an application for access to files in connection with a pending court case could be granted.

The Ombudsman stated that normally an authority cannot consider and decide on an application for access to files without being in possession of – and going through – the documents which the application concerns.

The Ombudsman also stated that the Ministry of Taxation did not have the competence to make a de-

cision concerning the application for access to files. The fact that the Ministry dealt with court cases within the entire domain of the Ministry did not in itself give the Ministry this competence. The Ombudsman considered it regrettable that the Ministry had made a decision concerning the application anyway, without having first obtained the desired documents. Alternatively, the Ministry could, in the Ombudsman's opinion, have forwarded the application for access to files to the tax authority or authorities which there was reason to suppose would be able to locate the desired documents. (Ref. no. 2003-4014-201).

## 14. Ministry of Social Affairs

*Of 425 cases closed in 2005, 157 were investigated. Criticism and/or recommendations were expressed in eleven cases. Five cases are summarized below.*

### 1. Authorities' obligation to consider human rights provisions

In a decision about establishment of a payments arrangement under the terms of the act concerning collection of child maintenance arrears a social complaints board stated that the board had no obligation to consider a complainant's reference to the European Human Rights Convention. In a statement to the Ombudsman the board wrote that it must be presumed that an act passed by the Danish Parliament is in accordance with existing legislation.

The Ombudsman found that the board's statements could leave the impression that the board did not consider itself obligated to examine whether the decisions made in individual cases were within the framework of the provisions of the Convention.

The Ombudsman found this understanding to be incompatible with administrative authorities' common obligation to contribute to the fulfilment of the

international commitments that the state makes. The Ombudsman pointed out that by acceding to the European Human Rights Convention and the appurtenant protocols Denmark has engaged to act in accordance with the rules of the Convention. This implies, among other things, that the administration must ex officio consider human rights obligations in its application of law in concrete cases.

The Ombudsman stated that the social complaints board must consider the provisions of the Convention when making decisions concerning concrete cases if it was relevant to the case. This applied to all types of cases. The crucial matter is whether the result of the decision may be in contravention of the state's obligations (the rights of the individual) pursuant to the Convention. (Ref. no. 2003-0244-658).

## 2. Help for handcycle

Training/treatment instrument. Administrative practice. Information to the Danish Parliament

A citizen complained on behalf of his handicapped son about the social authorities' refusal to help procure a handcycle pursuant to the act on social services. The social authorities considered the handcycle to be a training/treatment instrument to which, in the authorities' opinion, no help could be rendered pursuant to the social legislation. The Ministry of the Interior and Health stated that the health services only pay expenses for the treatment instruments that the patient is given as part or continuation of hospital treatment.

The Ombudsman did not find that there was sufficient basis for criticizing the social authorities' fixed

practice of long standing according to which the act on social services is interpreted in such a way that no support can be granted to expenses the primary aim of which is training or treatment.

Since this practice is not clearly evident from the wording of or the preparatory work for the act, and since therefore it is not clear whether the Danish Parliament intended that there should be no possibility for support for training or treatment instruments, the Ombudsman informed the Danish Parliament's Legal Affairs Committee about the case. (Ref. no. 2004-0459-054).

## 3. Reduction of cash benefit

Giving of grounds and guidance on appeal. Exemption from time limit for appeal

A woman complained that the local authority and the social complaints board had reduced her cash benefit because she had received cash benefit for six consecutive months.

The Ombudsman did not find that there was basis for criticizing that the woman's cash benefit had been reduced.

However, the Ombudsman criticized that the local authority's announcement of the reduction of the

woman's cash benefit had not been accompanied by grounds and a guidance on appeal.

Furthermore, the Ombudsman found that it provided grounds for severe criticism that the social complaints board had originally refused to investigate the woman's complaint about the local authority's decision, giving as reason that the time limit for appeal had been exceeded. (Ref. no. 2004-0677-050).

## 4. Preclusion of complaint handed in on time in connection with establishment of the topic of the complaint

A local authority made a decision about support for medicine expenses and about cash benefit.

The citizen and his trade union complained to the social complaints board which understood the complaint to concern only the decision about support for

medicine expenses. In a letter to the citizen the board asked him to state whether the complaint should also be considered as a complaint about the refusal of cash benefit. The board then made a decision about support for medicine expenses et cetera. Nearly six

months later the trade union pressed the board for a decision in the cash benefit case. As an answer, the board referred to the letter about the topic of the complaint, thus did not take a position on the cash benefit case.

The Ombudsman criticized that without the proper basis the board had defined the topic of the complaint in such a way that the complaint about the refusal of cash benefit was not considered. The Ombudsman stated that the case concerned the man's basis for providing for himself. The Ombudsman found it reasonable to suppose that when there is

doubt about the topic of the complaint, there is basis for assuming that the complaint includes such a significant decision.

In the present case, no considerations spoke against the board's investigation of the trade union's and the man's complaint – which was handed in on time – concerning the cash benefit case.

The Ombudsman recommended that the social complaints board reconsider the case and in that connection decide on whether the board will consider the case concerning cash benefit. (Ref. no. 2004-3492-025).

## 5. Support for handicapped man's access to his children on normal terms

### The compensation principle

After a rehabilitation course a man whose ability to function was significantly reduced due to, among other things, brain damage and widespread paralysis applied for special socio-pedagogical support in the weekends in which he had access to his two children who were ten and twelve years old. According to the custody agreement the man was entitled to access every other weekend and one workday every week in correspondence with the normal terms of custody agreements. The local authority only granted special support amounting to one monthly weekend of access and stated that the man was now more resourceful and lived so close to the children that they were able to cycle to his place for shorter visits. The social complaints board confirmed the decision.

The National Appeals Board rejected the case because it was not significant on grounds of principle or in general, but depended on a concrete assessment of the man's need for help.

The Ombudsman recommended that the National Appeals Board considered the case, especially with a view to establishing the significance of the compensation principle for granting socio-pedagogical support to handicapped in connection with access to children. The case includes an exposition of the compensation concept in handicap concerns and an exposition of the rules on the National Appeals Board's acceptance of cases for investigation.

The National Appeals Board then considered the case and granted socio-pedagogical support for access every other weekend. (Ref. no. 2004-1542-051).

## 15. Prime Minister's Office

*Of fourteen cases closed in 2005, seven were investigated. Criticism and/or recommendations were expressed in four cases. Two cases are summarized below.*

### 1. Access to files concerning VAT rebate for the Royal Family

A journalist complained that the Prime Minister's Office refused to grant access to files concerning the state's VAT rebate for the Queen and the other members of the Royal Family. The Prime Minister's Office's motivation for the refusal was that the information concerned individuals' private, including financial, circumstances.

The Ombudsman found that to some extent the Queen's and the other members of the royal family's expenses must be said to concern their private consumption. However, in the Ombudsman's view there must necessarily also be expenses concerning cere-

monial and other duties. The Ombudsman did not find that information concerning VAT on these expenses could be excepted pursuant to the Access to Public Administration Files Act which only mentions "private", including financial, circumstances.

Furthermore, the Ombudsman doubted that access to files would reveal anything about the Queen's and the other members of the Royal Family's private economy.

The Ombudsman recommended that the Prime Minister's Office resume the case. (Ref. no. 2004-2108-201).

### 2. Duty to reconstruct documents

Two journalists asked the Prime Minister's Office for access to the documents that the Prime Minister took with him in connection with the formation of government in the autumn of 2001. The Office refused, stating that the documents could not be located in the Office.

The Prime Minister's Office wrote to the Ombudsman that the legislation on filing very rarely implies that an authority is obliged to keep preliminary versions or rough sketches of documents which are later changed. Also, the Office considered that it would be possible to except the documents from the right to access to files pursuant to provisions in the Access to Public Administration Files Act.

The Ombudsman obtained a statement from the State Archives. The State Archives found that the Office should have kept the documents in question. On this background the Ombudsman stated that the Office was obliged to keep the documents and that it was therefore regrettable that the Office was not in possession of them.

The Ombudsman stated generally that in situations where a document must not be discarded according to the legislation on filing, an authority is obliged to reconstruct the document to the extent possible at the time when it is established that the document is missing.

Since the Ombudsman was not in possession of the documents, he had no basis for assessing whether

the documents could have been excepted pursuant to provisions in the Access to Public Administration Files Act. It was also difficult for the Ombudsman to see that the Office could make this assessment without being in possession of the documents.

The Ombudsman recommended that the Prime Minister's Office resume the case with a view to in-

vestigating whether it was possible to reconstruct the documents – for example by approaching the Prime Minister – and in that case make a decision concerning the application for access to files. (Ref. no. 2004-3922-801).

## 16. Ministry of Transport and Energy

*Of 71 cases closed in 2005, eighteen were investigated. Criticism and/or recommendations were expressed in four cases. One case is summarized below.*

### 1. Access to files concerning a fixed link across Fehmarn Belt

Extraction. Giving of grounds

A journalist complained about the Ministry of Transport and Energy's refusal of access to files concerning a fixed link across Fehmarn Belt.

The Ombudsman found that the Ministry had in some cases excepted documents pursuant to the Access to Public Administration Files Act which could not be looked upon as "internal work documents", and the Ombudsman raised doubt about the character of some of the documents to which access had been denied because they were documents prepared by an authority for meetings between ministers.

Moreover, the Ombudsman found that the Ministry had used the concept of extraction in another sense than presupposed in the Access to Public Administration Files Act, and the Ombudsman made some general remarks about extraction. In relation to

some exempt documents concerning potential reductions of charges on the Great Belt Fixed Link the Ombudsman stated, among other things, that estimates et cetera of future circumstances do not intrinsically imply that the information is exempt from access to files.

The Ombudsman also criticized the grounds given by the Ministry to the journalist. Thus, in the Ombudsman's opinion it was an error that the Ministry had merely stated that a number of documents would not be handed over and as grounds had referred to the Access to Public Administration Files Act without specifying which provision had been applied in regard to each document. (Ref. no. 2005-0832-501).

## 17. Ministry of Foreign Affairs

*Of nineteen cases closed in 2005, seven were investigated. Criticism and/or recommendations were expressed in five cases. One case is summarized below.*

### 1. The Ministry of Foreign Affairs' delegation of recruitment competence to consultancy

It appeared from a concrete case which the Ombudsman was considering that the Ministry of Foreign Affairs had made a contract with a private consultancy concerning recruitment of employees for Danish aid programmes in the development countries.

The Ombudsman raised the question of the legality of the Ministry of Foreign Affairs' delegation on his own initiative.

The Ombudsman stated that an authority cannot without specific statutory title delegate the competence to make decisions pursuant to administrative law to a private business. Furthermore, the access to leave it to a private business to prepare cases in which decisions pursuant to administrative law are made, is limited. The Ombudsman further stated that no clear demarcation could be given as to which preparatory steps could be left to private businesses without specific statutory title. In the present case the Ombudsman had no remarks to the fact that the Min-

istry of Foreign Affairs left it to the private business to manage the practical work involved in sending letters of rejection to job applicants. However, the Ombudsman stated that the wording of grounds for rejection of job applications could not be left to private businesses without specific statutory title.

The Ministry of Foreign Affairs then stated that in the future the Ministry would make sure that the concrete letters of rejection were based on a written instruction from the Ministry. The Ombudsman took it that the concrete grounds for rejection would be described in the instruction to the extent necessary. Accordingly, and since the Ministry of Foreign Affairs had confirmed that the Ministry alone made all decisions in the recruitment cases in question after having received all available information about the applicants, the Ombudsman took no further action concerning the case. (Ref. no. 2003-2534-809).

## 18. Ministry of Education

*Of 43 cases closed in 2005, six were investigated. Criticism and/or recommendations were expressed in one case. The case is summarized below.*

### 1. Reduction of the compulsory retirement age

In order to comply with demands for expenditure cuts the Ministry of Education had reduced the com-

pulsory retirement age for the Ministry's employees appointed on a group contract basis from 70 to 67

years. An employee who had been dismissed when she turned 67, complained to the Ombudsman.

In the Ombudsman's opinion serious doubt could be raised about the accordance between the dismiss-

als and the principle of proportionality in administrative law. The Ombudsman recommended that the Ministry considered once again on what basis the dismissal was warranted. (Ref. no. 2004-3230-813).

## 19. Ministry of Economic and Business Affairs

*Of 38 cases closed in 2005, four were investigated. Criticism and/or recommendations were expressed in three cases. One case is summarized below.*

### 1. Repayment of subsidy which conflicted with rule established internally

A home owner had applied to the Energy Savings Fund for a subsidy for establishing district heating in his property. The application was granted on the condition that the subsidized work and installations met the Energy Savings Fund's technical minimum requirements. The requirements appeared from the Fund's application forms with printed directions in which, furthermore, reference was made to a number of relevant technical standards. Subsequently, the Energy Savings Fund found that no radiator had been installed in the bedroom. In the Energy Savings Fund's opinion, this conflicted with the Fund's technical minimum requirements, and the Fund demanded that the subsidy be paid back.

The Ombudsman stated that the Energy Savings Fund's requirement for installation of radiators in all living rooms did not unequivocally follow from the relevant technical standards to which reference was

made in the application forms. Thus, the requirement could be characterized as a rule established internally. However, disregard of such a rule could – in this case, where the home owner was in good faith concerning the compliance of the work with the technical minimum requirements and furthermore had already paid for the completed work – neither have the result that the granted subsidy must be considered unwarranted, nor justify a revocation of the subsidy. The demand for repayment was therefore unwarranted, and the Ombudsman considered the Energy Savings Fund's consideration of the case to be regrettable. However, since the home owner had complied with the demand for installation of a radiator in the bedroom, and the demand for repayment had therefore been withdrawn, the Ombudsman had no basis for recommending to the Fund that the case was resumed. (Ref. no. 2003-3091-323).

## 20. Local authorities

*Of 1,045 cases closed in 2005, 108 were investigated. Criticism and/or recommendations were expressed in 36 cases. Seven cases are summarized below.*

### 1. Public employees' freedom of speech

#### Right and duty to react to illegal orders

A medical consultant participated in a TV documentary about apoplexy treatment and stated in the programme that apoplexy patients ought to be treated in specialist wards, and that it resulted in a higher mortality rate if they were admitted to and treated in other wards. The consultant's participation and the recording of a concrete case story which was also brought in the programme, had first been approved by the hospital management.

Before the programme was aired, the hospital management attempted to make the consultant lend his name to a press release in which he was to state that the treatment of the patient who participated in the programme had been professionally justifiable. The consultant refused this and in the same connection participated in a newscast in which he stated, among other things, that his freedom of speech had been violated by the attempt to make him approve the press release.

The consultant's employer, the county authority, rebuked him for his "overall handling of the media" in the case. It was the county authority's view that he had not shown sufficient loyalty to the hospital's endeavours to give patients with apoplexy a qualified treatment, and that he had acted contrary to the

county authority's information policy by participating in the newscast without notifying the management.

The consultant complained to the Ombudsman about the county authority's handling of the case. In a preliminary report the Ombudsman stated that the consultant participated in the newscast as a private person. He was therefore protected by the rules about public employees' freedom of speech, thus neither obliged to notify his employer before nor after the interview. The consultant's participation in the documentary, on the other hand, was part of his professional duties, therefore he was not protected by the rules on freedom of speech. However, in the Ombudsman's assessment the statements that the consultant made in the programme could not be regarded as being at variance with the limits set by the county authority for his participation in the programme, although they could be perceived as critical of the health service as such. On this background the Ombudsman did not find that there was basis for rebuking the consultant.

On the basis of the Ombudsman's preliminary report the county authority withdrew the reprimand. (Ref. no. 2002-3762-812).

## 2. Recordings of meetings between citizen and authority

A citizen complained about the authorities' refusal of letting him record meetings between the authorities and him on dictaphone/tape recorder.

In the Ombudsman's opinion there is nothing to prevent an authority from accepting that a citizen records meetings between the citizen and the authority.

Taking as his basis the principle that the public authorities define the terms of the meetings that they arrange themselves, the Ombudsman stated, however, that a citizen cannot claim a right to record his meetings with the administration. Any limits to the citizen's possibilities for recording a meeting must be based on objective reasons.

Still, there may be situations in which the consideration of for instance the citizen's personal matters

means that it is most in keeping with good administrative conduct to let the citizen record interviews with the authority. For instance, the citizen may not, due to personal matters, be able to understand or maintain sufficiently the course or contents of the case without the possibility of having and recording interviews with the authority. When a citizen is refused access to make sound recordings, a concrete assessment based on the citizen's personal matters should be made.

The Ombudsman stated that it was regrettable that it was not specifically stated in the local authority's refusal whether the local authority had made a concrete assessment of the citizen's need to be able to make sound recordings. (Ref. no. 2004-2801-009).

## 3. Limits to correspondence between citizen and authority

### Consideration of applications. Announcement of decision

A citizen complained that the local authority did not answer her applications for financial help to a number of single payments. In a statement to the Ombudsman the local authority described in which cases the local authority did not answer the citizen's applications, and the reason for this.

The Ombudsman stated that the local authority was obliged to make a decision concerning applications that the local authority had not previously decided on. The Ombudsman did not think that an authority could make a general decision not to answer applications of a certain kind.

Furthermore, the Ombudsman stated that within certain narrow bounds it is possible for an authority to limit the contact to a citizen, including limiting or completely stopping its correspondence with the cit-

izen concerning issues on which the authority has made a decision.

In this connection the Ombudsman stated that such decisions to limit or stop the correspondence must be based on a concrete balancing of the consideration that the citizen is served by the public administration to the degree necessary and sufficient on the one hand, and on the other, considerations concerning the public resources. The administration must make great efforts to make the contact work, but in cases where it will affect the institution's work and/or the contact with other citizens significantly if the contact is not limited, it is possible for the administration to intervene. Decisions concerning this should be announced in writing and in such a way that the citizen can see in which areas and ways the corre-

spondence has been limited, and possibly how the correspondence may be normalized again.

The Ombudsman considered that it would have been most in keeping with good administrative con-

duct if the local authority had informed the citizen of the limitation to the contact in writing. (Ref. no. 2004-3279-009).

#### 4. Invitation to journalists to dialogue with authority

Access to files. Increased public access

Two journalists applied to a local authority for access to files concerning all the trips made by the former Lord Mayor's wife on public funds.

It did not give the Ombudsman cause for remarks that the local authority assessed that the journalists' wish for access to files did not meet the requirement for identification of the case (cases) in the Access to Public Administration Files Act.

On the basis of considerations that the principle of increased public access in the Access to Public Administration Files Act should be extended particularly to representatives of the media, the Ombudsman recommended that the local authority resume the case. In that connection the Ombudsman recommended to the two journalists that they enter into a dialogue with the local authority. (Ref. no. 2004-3196-801).

#### 5. Local authority's answer to question from citizen

The Ombudsman recommended that a local authority resume the consideration of a case in which the local authority had omitted to answer three letters from a citizen. The local authority resumed the case and answered one of the letters. Concerning the other two letters the local authority wrote that they were about good administrative conduct, and that the local authority was unable to assess whether the case had been processed in accordance with good administrative conduct because the case worker had later died. In answer to a later application the local authority wrote, among other things, that it was not obliged to answer questions aimed at criticizing the local authority's case consideration.

The Ombudsman stated that the circumstance that the relevant case worker has died does not excuse an authority from considering whether it has complied with the rules of good administrative conduct. However, in this circumstance it must be accepted that the authority does not answer questions from a citizen concerning the specific background to certain measures taken by the authority as part of the consideration of a case, when the questions cannot be answered on the basis of the authority's notes in the case or any other knowledge of the case that the authority has. The Ombudsman also criticized that the local authority had stated that it was not obliged to answer questions aimed at criticizing the local authority's case consideration. (Ref. no. 2005-0194-109).

## 6. The Ombudsman's competence in dismissal cases in which a severance agreement has been made

An employee in a local authority complained to the Ombudsman because his employer had given him an official order to improve his performance, and because he had found himself obliged to make a severance agreement with the local authority since the local authority had let him know that the alternative was a dismissal.

The Ombudsman decided to depart from his previous practice and refused to enter into the case. The Ombudsman thus laid stress on the two Supreme Court sentences passed in November 2004. The sentences established that public employment can be ended by severance agreements notwithstanding that the authority has decided on the dismissal unilaterally before the agreement. The sentences imply

that the authorities are excused from mistakes and shortcomings which may have happened in connection with and prior to such agreements. This also means that public employees can renounce the protection given by the rules of administrative law against decisions that are not objective. Formerly, the Ombudsman was of the opinion that the employee could not opt out of i.a. the rights to be heard and given grounds, even though a voluntary severance agreement had been made.

The Ombudsman also emphasized that it appeared from the present severance agreement that all claims between the employee and the local authority had been settled entirely. (Ref. no. 2005-1938-813).

## 7. Resumption of livestock farming without permission

On behalf of a local authority an environmental centre informed a farmer that pig breeding could not be resumed at his farm without an advance notification to and permission from the local authority. The production had been discontinued for about two years and four months.

The Ombudsman stated that he did not have sufficient basis for criticizing the local authority's decision. However, the Ombudsman criticized that the

local authority had emphasized two matters which must be regarded as intervening circumstances. Furthermore, the Ombudsman criticized that the decision was not accompanied by grounds. The Ombudsman recommended to the Danish Forest and Nature Agency to initiate insertion of rules regarding breach of continuity in the act on environmental protection. (Ref. no. 2003-1948-110).